

JOHN F. BARG (State Bar No. 60230)
(jfb@bcltlaw.com)
MARC A. ZEPPELLO (State Bar No. 121185)
(maz@bcltlaw.com)
BARG COFFIN LEWIS & TRAPP, LLP
350 California Street, 22nd Floor
San Francisco, California 94104-1435
Telephone: (415) 228-5400

Attorneys for BNSF RAILWAY COMPANY,
as successor to THE ATCHISON, TOPEKA & SANTA FE
RAILWAY COMPANY

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

THE ATCHISON, TOPEKA & SANTA FE
RAILWAY COMPANY, et al.,

Plaintiffs,

v.

HERCULES INCORPORATED, et al.,

Defendants.

Case No.: CV-F-96-5879 OWW/DLB
(CONSOLIDATED SHAFTER CASES)

**STIPULATION FOR DISMISSAL OF
CLAIMS AND ORDER**

Pursuant to Federal Rule of Civil Procedure 41(a), BNSF Railway Company (formerly Burlington Northern and Santa Fe Railway Company and successor to The Atchison Topeka & Santa Fe Railway Company) ("BNSF"), The Dow Chemical Company ("Dow"), Shell Oil Company ("Shell"), the California Department of Toxic Substances Control ("DTSC"), and Hercules Incorporated ("Hercules"), collectively referred to herein as the "Parties," hereby stipulate and agree as follows:

A. On January 14, 1998, DTSC filed an action in this Court against a number of individuals and entities including, but not limited to, BNSF, Dow, Shell, and Hercules, for cost recovery, declaratory relief, and civil penalties in connection with response costs incurred and to be incurred by DTSC at or in connection with the Brown & Bryant Shafter Site. *DTSC v. Brown & Bryant, Inc., et al.*, Case No. CIV-F-98-5050 ("DTSC Action"). The Court consolidated the

1 DTSC Action with two earlier actions which had been filed concerning the Brown & Bryant
2 Shafter Site: *Atchison Topeka & Santa Fe Railway Co., et al. v. Brown & Bryant, Inc., et al.*, Case
3 No. CIV-F-92-5068; and *Atchison Topeka & Santa Fe Railway Co. v. Hercules Incorporated, et*
4 *al.*, Case No. CIV-F-96-5879, and directed that “all future pleadings should contain ONLY the
5 LEAD CASE NUMBER OF CV-F-96-5879 OWW DLB (member case 98-5050-OWW).” (These
6 consolidated actions insofar as they relate to the Brown & Bryant Shafter Site are hereafter
7 referred to as the “Consolidated Shafter Cases.”) DTSC filed a First Amended Complaint on
8 March 9, 1998 and a Second Amended Complaint on November 6, 1998.

9 B. On or about May 6, 1998, BNSF filed its answer and cross-claim in the
10 Consolidated Shafter Cases, and on or about November 9, 1998, BNSF filed its answer to DTSC’s
11 Second Amended Complaint and an amended cross-claim. BNSF’s amended cross-claim asserts
12 claims against a number of individuals and entities including, but not limited to, Dow, Shell, and
13 Hercules.

14 C. On or about April 6, 1998, Dow filed its answer and counterclaim in the
15 Consolidated Shafter Cases, and on or about May 6, 1998, Dow filed its first amended answer and
16 first amended counterclaim to DTSC’s First Amended Complaint. On or about June 11, 1998,
17 Dow filed a motion to dismiss and to strike portions of BNSF’s cross-claim and Dow amended that
18 motion on or about July 13, 1998. Dow’s motion to dismiss and to strike portions of BNSF’s
19 cross-claim was granted by order of November 13, 1998. On November 30, 1998, Dow filed its
20 answer to BNSF’s cross-claim along with a cross-claim against BNSF. BNSF answered the cross-
21 claim on December 18, 1998.

22 D. On or about June 15, 1998, Shell filed its answer in the Consolidated Shafter Cases,
23 and on or about June 24, 1998, Shell filed its answer to BNSF’s cross-claim.

24 E. On or about October 30, 1998, Hercules filed its answer in the Consolidated Shafter
25 Cases to DTSC’s First Amended Complaint, a counterclaim against DTSC, and a cross-claim
26 against BNSF. DTSC answered the counterclaim on November 20, 1998, and BNSF answered the
27 cross-claim on November 23, 1998.

28 F. On or about May 4, 2009, the United States Supreme Court issued its decision in

1 *Burlington Northern and Santa Fe Railway Company, et al. v. United States, et al.*, 129 S. Ct. 1870
2 (2009), which, among other matters, addressed the issue of “arranger liability” under the Section
3 107(a)(3) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42
4 U.S.C. § 9607(a)(3).

5 G. Following and based on the United States Supreme Court’s decision in *Burlington*
6 *Northern v. United States*, cited above, DTSC informed BNSF, Dow, Shell, and Hercules that
7 DTSC would dismiss its claims against Dow and Shell in the Consolidated Shafter Cases. On
8 November 17, 2009, the Court entered a Stipulation for Dismissal of Claims and Order, dismissing
9 with prejudice DTSC’s claims against Dow and Shell, and dismissing with prejudice Dow’s
10 counterclaim against DTSC, in the Consolidated Shafter Cases.

11 Accordingly, the Parties hereby stipulate and agree to, and request that the Court order, the
12 following:

13 1. BNSF’s amended cross-claim against Dow in the Consolidated Shafter Cases is
14 dismissed with prejudice, with BNSF and Dow each to bear its own costs and attorneys’ fees.

15 2. Dow’s cross-claim against BNSF in the Consolidated Cases is dismissed with
16 prejudice, with Dow and BNSF each to bear its own costs and attorneys’ fees.

17 3. BNSF’s amended cross-claim against Shell in the Consolidated Shafter Cases is
18 dismissed with prejudice, with BNSF and Shell each to bear its own costs and attorneys’ fees.

19 4. This Stipulation and Order shall have no effect on DTSC’s claims in the
20 Consolidated Shafter Cases against BNSF or Hercules, nor shall it have any effect on BNSF’s or
21 Hercules’s defenses to those claims.

22 5. This Stipulation and Order shall have no effect on BNSF’s and Hercules’s claims in
23 the Consolidated Shafter Cases against each other, nor shall it have any effect on BNSF’s or
24 Hercules’s defenses to such claims.

25 6. This Stipulation may be signed in counterparts and facsimiles of signatures, or
26 signatures on a portable document format (pdf) copy of this Stipulation, shall have the same force
27 and effect as originals.

28 7. Each of the signatories hereto is authorized to enter into the Stipulation on behalf of

1 the party for whom he or she signs.

2 IT IS SO STIPULATED.

3 Dated: May 21, 2010

BARG COFFIN LEWIS & TRAPP, LLP

4 /s/ Marc A. Zeppetello

MARC A. ZEPPELLO

5 *Attorneys for BNSF Railway Company*

6 Dated: May 21, 2010

WENDEL, ROSEN, BLACK & DEAN, LLP

7 /s/ Stephen McKae

8 STEPHEN MCKAE

9 *Attorneys for The Dow Chemical Company*

10 Dated: May 21, 2010

LEWIS, BRISBOIS, BISGAARD & SMITH

11 /s/ Michael K. Johnson

12 MICHAEL K. JOHNSON

Attorneys for Shell Oil Company

13 Dated: May 21, 2010

14 EDMUND G. BROWN JR.,

Attorney General of the State of California

15 KEN ALEX

Senior Assistant Attorney General

16 /s/ Sandra Goldberg

17 SANDRA GOLDBERG

Deputy Attorney General

18 *Attorneys for Dept. of Toxic Substances Control*

19 Dated: May 21, 2010

K & L GATES, LLP

20 /s/ Edward P. Sangster

21 EDWARD P. SANGSTER

Attorneys for Hercules Incorporated

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24 IT IS SO ORDERED.

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26 Dated: May 24, 2010

/s/ Oliver W. Wanger

UNITED STATES DISTRICT JUDGE